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ABSTRACT

Legal issues have become of increasing concern to school teachers and school officials. This article addresses the need for teachers, administrators, and students to have a basic awareness of their legal rights and responsibilities. Based upon a review of leading law digests, the following significant legal issues are identified and examined: integrating special needs students, child abuse or neglect, supervision of school activities, and maintaining an appropriate educational climate. Two models (figures appended) are proposed to incorporate these issues into preservice teacher education programs in the context of coursework in the liberal arts curriculum. The first model assumes the format of a cluster course surrounding a central theme such as basic rights. In such a cluster, several courses would be offered in different disciplines and would address aspects of the issue of basic rights. Participating courses might include philosophy, political science, sociology, and education, and would provide opportunites for active learning and integration of learning across the curriculum. The second model proposes broad-based topics presented in teacher education courses and the liberal arts curriculum, capped by a seminar which would integrate topics and issues. (LL)

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Integrating Legal Issues into Teacher Preparation Programs

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Running Head: Integrating Legal Issues

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Abstract

Legal issues have become of increasing concern to school teachers and school officials. Relevant data from American school law cases are presented that support the importance of discussion of legal issues in the preparation of teachers. These include: special education, child abuse/neglect, supervision of school activities, and maintaining an appropriate educational climate. Finally, two models are presented that suggest how legal issues can best be addressed in the preparation of teachers through education and liberal arts coursework.

Introduction

Day to day functions within schools are increasingly impacted by legal decisions affecting such diverse issues as curriculum, management of the school environment, education of special students, as well as decisions concerning basic rights afforded to all persons. The increasing concern with such issues in our society highlight the need for teachers to be trained in the legal rights and responsibilities of schools, teachers, and students.

The number of teachers and administrators involved in legal proceedings involving teachers and administrators each year is significant (Fischer, Schimmel, and Kelly, 1991, p. xxvii). Statistically the number of law suits in education is on the rise in the United States and most teachers are well aware of this phenomenon (Traynelis-Yurek and Giacobbe, 1992).

Teachers and administrators are increasingly realizing the need for greater awareness of legal issues that impact them in their daily work. A recent survey of practicing teachers (Traynelis-Yurek and Giacobbe, 1992) examined twenty possible issues that have been covered in teacher training programs. The authors found that legal issues (laws and litigation)

were rated as the third most essential area of teacher preparation.

In this article we discuss the need for basic awareness of legal issues among elementary, middle, and secondary teachers. Secondly, we propose models to incorporate these issues into the education of preprofessional teachers within a liberal arts curriculum.

Contemporary Legal Issues for Teachers

Scholars in the field of educational law regularly produce digests of legal issues and decisions of concern to educators and administrators (e.g. Fischer, Schimmel, and Kelly 1991; Data Research Inc., 1992). These compendiums contain discussions of a large number of legal cases and findings relating to such diverse areas as employment rights, student rights, supervision of after school activities, administrative liability, and the rights of handicapped students.

Based on a review of the leading digests, and the experiences of the authors, we have identified and will examine four significant legal issues: child abuse, integrating special needs students, maintaining an appropriate educational environment, and supervision of school activities.

Child Abuse

A recent trend in the study of child abuse has been toward broadening the definition of the concept. Illustrative of this is the approach taken in the National Child Abuse Prevention and Treatment Act of 1974, in which child abuse is defined as physical or mental injury, sexual abuse, or exploitation, negligent treatment, or maltreatment of a child under age eighteen..by a person who is responsible for the child's welfare, under circumstances which indicate that the child's health or welfare is harmed or threatened thereby (Fischer, Schimmel, and Kelly, 1991, p. 77).

The central issue for teachers is their duty to report child abuse. Presently all states require reporting of child abuse if the abuse or neglect results in physical injury. Educators must have reason to believe or reasonable cause to believe or suspect that a child is subject to abuse or neglect (Fischer, Schimmel, and Kelly, 1991, p. 78). In all states, teachers who are acting in good faith when they report suspected child abuse are protected from civil and criminal prosecutions thereby.[1]

Integrating Special Needs Students

Many people have made significant efforts to

ensure that the educational needs of handicapped children are provided for to the maximum extent appropriate, and that as far as possible they are educated with nonhandicapped children in regular classes. The Education for All Handicapped Children Act of 1975 (Data Research Inc. 1992, p. 424; and Fischer, Schimmel, and Kelly, 1991, p. 313) requires states to provide procedures to ensure that handicapped children be educated to the maximum extent appropriate with nonhandicapped children in regular classes. A number of court cases (e.g. Board of Education v. Rowley 1982; and Block v District of Columbia, 1991) have helped clarify the requirements governing the educational placement of handicapped children.[2] Thus handicapped children may not be excluded on the basis of the teacher's discomfort with the child's handicap, or other reasons.

Specifically, federal legislation requires that no handicapped child may be denied a free appropriate education, and that handicapped children must be fairly assessed so they can be protected from inappropriate classification (Data Research Inc., 1992, p. 447; Fischer, Simmel, and Kelly, 1992, p. 318). Handicapped children may not be inappropriately segregated from their nonhandicapped peers and whenever possible they

must be included in regular programs or schools. Finally, state and local educational agencies are obligated to provide "fair and impartial" hearings to resolve disputes over placement of handicapped children (Fischer, Simmel, and Kelly 1991, p. 318; Data Research Inc., 1992, p. 433).

Maintaining Appropriate Educational Environment

A number of complex legal issues are subsumed under the concept of maintaining an appropriate educational environment. This includes issues related to classroom religious activities, teacher incompetence, and teacher misconduct. Classroom religious activities may include improperly engaging in religious activities, or departing from established curricula to advocate religious points of view.

The concern for teachers is whether government practices relating to religion violate the Establishment Clause of the First Amendment (Data Research Inc., 1992, p. 55). Thus for example all teachers should be aware of the case of Lemon v. Kurtzman (1971), which established the main test to determine if government practices violate the Establishment Clause. Generally speaking, an educational practice must have a secular purpose, the main effect must be one that neither advances or

inhibits religion, and it must not foster excessive government entanglement with religion (Fischer, Simmel, and Kelly, 1991, pp. 170-72; Data Research Inc., p. 55).

Incompetence includes teaching deficiencies such as failure to maintain order and inadequate knowledge of subject matter (Data Research Inc. 1992, p. 282). Courts generally allow incompetence as a reason for dismissal providing proper procedures are followed (Data Research Inc., 1992, p.282-283).

Misconduct involves such discrepant issues as sexual harassment, sexual abuse, and discriminatory treatment (Data Research Inc., 1992, pps. 177, 232). Each of these issues has been the subject of complex litigation themselves. Our concern is that teachers are aware of the gravity of these issues and the importance of remaining current with proper procedures regarding these issues.

A significant body of case law is developing regarding the issues of willful teacher misconduct and incompetence as grounds for censure or termination. Thus all teachers should be familiar with the established policies of their school district regarding the definition of misconduct and the circumstances in

which they may be censured or terminated for incompetence.

Supervision of School Activities

Many legal cases concern the complex area of supervision of school activities. Because their charges are minors, teacher responsibilities in terms of supervision are more complex than for those who instruct adults, and thus it behooves teachers to be aware of legal developments regarding supervision. Supervision is an issue in such diverse educational activities as school athletics, shop classes, and on or off-grounds activities.

The primary legal concept around which supervision cases are centered is the idea of negligence. Generally, negligence is defined as acts or omissions that demonstrate a failure to use reasonable care or ordinary care, including inadvertence, carelessness, or the failure to foresee potential harm (Fischer, Simmel, and Kelly, 1991 p. 56-57). To be guilty of negligence, the following elements must be met:

> the existence of a legal duty to conform ones conduct to a specific standard to protect others from unreasonable risks of injury, a breach of that duty, the breach must be the direct cause of that injury, and the plaintiff must suffer damages

as a result (Data Research Inc., 1992, p. 2).

However, legislators and courts have traditionally recognized the existence of certain defenses against charges of negligence. These include: governmental immunity (under certain circumstances), and the doctrines of contributory and comparative negligence.[3] The relevance for teachers is that they need to be aware of the complexity of the issues related to supervision of minors under their care.

Models for Integration of School Law in the Preparation of Teachers

As evidenced by the examples of court cases cited, it is increasingly important for classroom teachers to be aware of their rights and responsibilities and those of students. In order to facilitate the awareness of legal issues into the education of teachers, two models are proposed specifically for the undergraduate liberal arts preparation of teachers. Legal issues are well-suited for an integrated liberal arts and teacher preparation program because effective teaching is related to knowledge of subject matter, critical thinking, and practical applications.

The first model for integration of legal issues into the preparation of teachers may take the format of a cluster course surrounding a central theme such as

basic rights (see Figure 1). In such a cluster, several courses would be offered in different disciplines that would address aspects of the issue of basic rights. Students in teacher preparation programs and students in varied liberal arts programs would participate. For example, participating courses may be offered in philosophy, political science, sociology, and education. The courses would share selected activities such as those suggested in Figure 1.

This model also provides excellent opportunities for active learning and for integration of learning across the curriculum for all students. For future teachers, it is gives varied viewpoints on legal issues and basic rights as they relate to education.

A second model proposes broad-based topics that may be addressed throughout the liberal arts education of future teachers (see Figure 2). The topics would be presented in the education curriculum and in the liberal arts/general education curriculum. A final senior seminar or capstone course in the education curriculum would be a place for integration of these numerous topics and issues relating to legal issues in education.

In the education curriculum, Foundations of Education may explore rights of teachers and rights of

students as well as the overall structure of the educational system. Educational Psychology might review rights of special needs students and relevant issues of adolescent development. Classroom management classes could examine the limits of discipline and how classroom management impacts rights and responsibilities of teachers and students.

Courses throughout the liberal arts and general education program of undergraduate liberal arts colleges provide numerous opportunities for examination of legal issues in education. For example, in sociology juvenile delinquency or sociology of law give valuable liberal arts' perspectives to legal issues impacting education. Political science courses describe basic knowledge of how laws are formulated, constitutional law, and the Bill of Rights. Classes in history could explore the roles of states and education or the process and perspective of western civilization on basic rights. Anthropology could explore the comparative development of educational systems or the evolution of systems such as laws. Other disciplines within the liberal arts including psychology, philosophy, international studies programs and others are rich with topics for examination of legal issues for education. Finally, in the preparation of teachers,

the senior seminar or capstone course offers an arena for synthesis of these perspectives.

For teacher preparation programs considering implementation of these models, programs may find it useful to review suggested levels of knowledge of legal issues in designing objectives for the students. These levels of knowledge may be categorized into basic, intermediate, or advanced levels.

For basic levels of understanding, students should know:

- based on the 10th Amendment, education is considered among the powers of the states;
- states have primary power and responsibility for public schools, powers must be exercised with rights guaranteed in Constitution;
- issues addressed and implications of the Bill of Rights.

For intermediate levels of knowledge, it is suggested students understand:

- civil rights statutes as related to schools;
- selected cases in education and relationship to the Bill of Rights;
- structure of federal and state court systems.

Advanced levels of knowledge should enable students to secure:

- constitutional interpretation of selected educational issues;
- awareness of historical and cross-cultural influences on legal issues;
- understanding of the interdisciplinary nature of legal issues and schools, teachers, and students;
- awareness of similarities and differences in legal issues from cross-cultural perspectives.

The suggested models as well as levels of knowledge of legal issues for future teachers are deemed important in the preparation of teachers. As schools are required to assume greater responsibilities, teachers must be better informed about their roles in the vigilant protection of their own rights and those of students. Thus, schools can become more viable instruments of social change.

References

Data Research, Inc. (1992). Deskbook encyclopedia of american school law. Rosemount, Minn.: Data Research, Inc.

Fischer, Louis, Schimmel, D., & Kelly, C. 1991. Teachers and the law, (3rd ed.). New York: Longman Pub. Co.

Traynelis-Yurek, Elaine, & Giacobbe, G.A. (1992). Teacher preparation areas described as most valued and least valued by practicing teachers. Teacher Educators Journal, 3(1), 23-31.

Endnotes

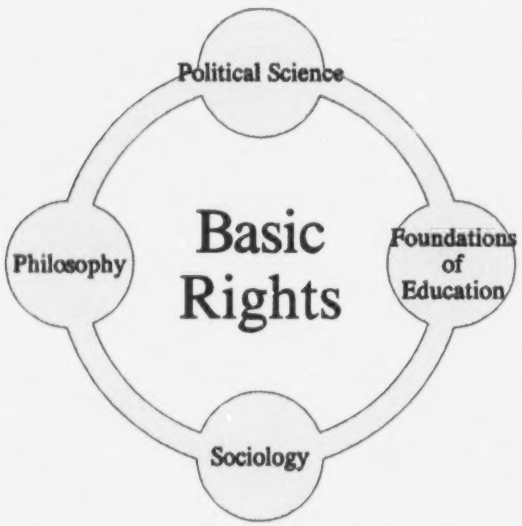
1. The precedent for these requirements is the case of Landeros v. Flood (1976, cited in Fischer, Schimmel, and Kelly 1991, p. 83), in which it was held that physicians can be held monetarily liable for failure to report child abuse.

2. The problems associated with educating handicapped students were brought to public awareness most recently, perhaps, in the controversies over the education of children with AIDS.

3. Recent cases that have helped clarify these issues include Czaplicki v. Gooding Joint School District 231 (1988, cited in Data Research Inc., 1992, p. 24-25), which found that principals have a statutory duty to protect the health of students they are responsible for, and must act reasonably in the face of a foreseeable risk to children, and Marlowe v. Rush-Henrietta Central School District (1990, cited in Data Research Inc., 1992, p. 8). This case dealt with the complex issues related to supervision of student athletics. In this case the court found that schools have no duty to protect student athletes from unreasonable risks.

Model 1 for Legal Issues for Classroom Teachers

Cluster course(s): Theme of Basic Rights

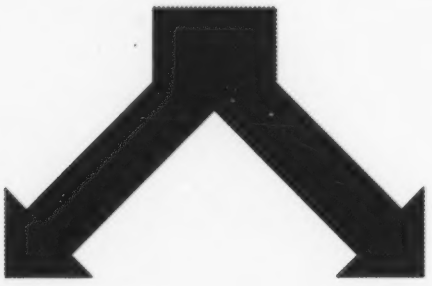


Possible strategies for integration

- Panel discussions (legal expert, ethics professor representative from the American Civil Liberties Union)
- Shared text (foundations of education text would be interesting choice
- Dramatic video for all classes to view
- Debate on basic rights/legal rights (student participation)

Model 2 for Legal Issues for Classroom Teachers

Cluster course(s): Theme of Basic Rights



Education Curriculum		Liberal Arts/General Curriculum
Education Foundations		
Educational Psychology		Sociology
Classroom Management		Political Science
Senior seminar/Capstone		History
		Philosophy
		International Study
		Anthropology
		Psychology